

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARRY WILLIAM MCMILLAN,

Defendant.

Case No. 10-cr-40062-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Harry William McMillan's motion for leave to proceed on appeal *in forma pauperis* (Doc. 87). A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3)(A). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

The Court is satisfied from McMillan's affidavit that he is indigent. It further finds that his appeal is not frivolous or taken in bad faith. Accordingly, it **GRANTS** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 87) and **DIRECTS** the Clerk of Court to send a copy of this order to the Court of Appeals in connection with Appeal No. 12-1348.

IT IS SO ORDERED.

DATED: March 2, 2012

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE